

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>**

**CASE NO. A-6621
PETITION OF LOWELL AND SAMANTHA FRANK**

**OPINION OF THE BOARD
(Opinion Adopted June 19, 2019)
(Effective Date of Opinion: June 26, 2019)**

Case No. A-6621 is an application for two variances needed to rebuild an existing accessory structure. The proposed construction requires a variance of five (5) feet as it is within 0.00 feet of the left side lot line. The required setback from the side lot line is five (5) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of five (5) feet from the rear lot line, as it is within 0.00 feet of that lot line. The required setback from the rear lot line is also five (5) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on June 19, 2019. Petitioners Lowell and Samantha Frank, who own the subject property, appeared in support of the requested variances.

Decision of the Board: Variances GRANTED.

EVIDENCE PRESENTED

1. The subject property is Lot 7, Block 17, Glenbrook Village Subdivision, located at 8614 Lynbrook Drive, Bethesda, MD, 20814, in the R-60 Zone. It a four-sided lot, 5,589 square feet in area, with side lot lines that converge towards the rear, and a rear lot line that is angled. See Exhibits 3 and 4(a).

2. The Statement of Justification ("Statement") submitted by the Petitioners describes their property as a "shallow, narrow, irregularly shaped lot" that is "far shallower" on the side where the garage exists. See Exhibit 3. The site plans in the record show a property that best approximates a trapezoid in shape, and that has a front lot line that is 70.00 feet long, a rear lot line that is 58.36 feet long, a left side lot line that is 78.30 feet long, and a right side lot line that is 99.72 feet long. See Exhibits 4(a) and (b).

3. The Statement notes that at 5,589 square feet, the subject property is less than the minimum lot size for the R-60 Zone, and is "smaller than many of the confronting or abutting lots on our block," noting that "[t]hree of the four confronting/abutting properties are larger than ours – 8612 Lynbrook measures 9,228 SF; 8616 Lynbrook measures 6,414 SF; 8615 Lynbrook measures 7,265 SF; and 4513 Gladwyne measures 5,636 SF." See Exhibit 3.

4. The Statement at Exhibit 3 describes the proposed construction as follows:

We seek to replace an existing one-car detached garage (accessory structure) with a structure on the same footprint [*Exhibit 1, front photo of our home with existing accessory structure*]. We seek a variance for both the side and the rear setbacks to maintain the existing placement, which is less than the required 5 feet from the side and rear property lines. The south (side) wall sits slightly angled on the property line, with the front left corner a few inches into our neighbor's property (8612 Lynbrook Drive, Lot 8) [*Exhibit 2, plat with existing garage, proposed structure, and relevant setbacks*]. The west/rear wall ranges from 0.3 to 4 feet from the rear property line [*Exhibit 3a-b, relation of rear of existing structure to property line*]. Both of these are less than the 5 feet from the side and rear property lines allowed under Zoning Ordinance Section 59-4.4.9.B.2. for accessory structures.

We would like to rebuild the garage essentially on the existing footprint, adjusting orientation slightly so that the southeast (front left) corner is fully on our side of the property line. The proposed structure would be the same dimensions as the existing structure: 10.4 feet wide and 20.3 feet deep. We are therefore requesting a variance of 5 feet from the side setback requirement and 5 feet from the rear setback requirement. Although the rear of the existing accessory structure is 0.3 feet from the rear lot line, we are requesting the full 5 foot variance in accordance with the recommendation of the Department of Permitting Services as stated in the denial letter, dated 4/1/2019. We would, however, reconstruct the new garage aligned with the current rear position of the garage, which ranges from 0.3 feet to 4 feet from the rear lot line.

5. The Statement states that the "current garage is an existing, legal nonconforming structure" that was built with the original house in 1942, in its current location. The Petitioners describe the existing structure as follows in their Statement:

... [The existing garage] was in a state of disrepair when we purchased the property. The foundation is cracked and leaks water, and the structure leans significantly. The lean has made it extremely difficult to open and close the door because the door and track have bent as a result. We are concerned that the structure is unsafe [*Exhibits 5a-e: photos of leaning structure with warped door, cracked foundation, poor interior*]. Rebuilding our garage would improve the safety of the structure as well as the aesthetics due to its current condition.

The Petitioners' Statement further indicates that the proposed construction would "maintain ... the traditional development pattern of the neighborhood," noting that "[m]any homes in our neighborhood have similar detached garages that are on, near, or over the side and/or rear property line(s) as shown on the accompanying photos and overhead map (see Exhibit 6). Furthermore, moving the structure five feet forward and five feet laterally in accordance with the Zoning Ordinance would create such a close proximity to the main building as to be out of character with similar properties in the neighborhood." See Exhibit 3.

6. The Statement indicates that the Petitioners purchased their property in 2012, and that prior to that time, in 2006, "legal, permitted additions ... were placed on the rear and side of the house...." The Statement then notes that "[i]f the rebuilt accessory structure were to be constructed in accordance with the Zoning Ordinance, this extension would be unusually close to the north wall of this structure (less than five feet)." The Statement states that the Petitioners "are not responsible for the existing setback, its location to our house, or its condition," and that granting the requested variances would allow them to "rebuild the structure in the same location it has been in for decades." It further states that such a placement is the "minimum necessary to maintain comportment with the established and traditional development of this neighborhood," and that "given the shape of [the subject] property, the location of the main structure, and the placement of the driveway on [the] property, there is no other reasonable place to locate the accessory structure" See Exhibit 3.

7. The Statement notes that the Petitioners have discussed the proposed construction with their neighbors, who are supportive. The Petitioners state in their Statement that their proposed construction will cause "no change to the views, use, or enjoyment" of their neighbors. See Exhibit 3. The record contains letters of support from the abutting and confronting property owners. See Petitioners' Exhibits 9(a)-(d), attached to Board Exhibit 3.

8. At the hearing, Petitioner Lowell Frank testified that he and his wife purchased the subject property in 2012, and are seeking to rebuild an existing accessory structure which dates to 1942. He testified that the new structure would be rebuilt with the same length and width as the existing structure, but that the structure would be shifted slightly so that it is wholly on their property.

Mr. Frank testified that the existing accessory structure (garage) has a cracked foundation and leans so that the track for its door is bent. He testified that he has concerns about the safety of the structure. Mr. Frank testified that without the grant of the requested variances, he would be unable to build on the (approximate) footprint of the original garage. He testified that his property is small in size for the R-60 Zone, and that it is small compared to neighboring properties. He testified that it also has an unusual shape.

Mr. Frank testified that he had discussed his proposed plans and variance request in depth with his neighbors, including the neighbors who share the property lines from which he is seeking variance relief. He testified that his neighbors were all supportive, and that they had signed letters to that effect. He testified that his proposed replacement structure would fit with the established pattern in the neighborhood, and indicated that his Exhibit 6 contains a map and photographs showing a representative, but not exhaustive, sampling of nearby properties with accessory structures that are on or over the property line.

In response to a Board question, Mr. Frank testified that the replacement structure would be built on a new slab and would be approximately one and half feet taller than the existing structure because of its roofline.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E.2, as noted below:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds, based on the Statement, site plan, and testimony of record, that at 5,589 square feet in area, the subject property is not only substandard for the R-60 Zone, but is also small compared to neighboring properties. The Board further finds, based on the Statement, site plan, and zoning vicinity map, that the subject property's convergent side lot lines and angled rear lot line give the property an unusual shape, and that this, coupled with the property's small size, significantly limits the area available for the construction of an accessory structure. See Exhibits 3, 4(a), and 7. Thus the Board finds that this property is unique for the purposes of Section 59-7.3.2.E.2.a.i of the Zoning Ordinance.

Section 59-7.3.2.E.2.a.v: the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the Statement and attachments thereto, and on the testimony of Mr. Frank, that the proposed replacement structure, in the location proposed, would substantially conform with the established historic or traditional development pattern of this neighborhood, in satisfaction of this element of the variance test. The Petitioners' written Statement notes, and their submitted photographs illustrate, that like their existing garage, many neighboring properties "have similar detached garages that are on, near, or over the side and/or rear property line(s)...." See Exhibit 3. The Petitioners have included with their submission an annotated Zoning Vicinity Map with photographs of twelve marked properties that appear to confirm Petitioners' assertion that many homes in their immediate neighborhood have similarly situated detached garages

or other accessory structures. See Petitioners' Exhibit 6, attached to their Statement (Board Exhibit 3). Finally, the Board finds that traditionally, the subject property has contained a one-car garage in the approximate location (relative to the side and rear lot lines) that is proposed for the replacement structure.

2. *Section 59-7.3.2.E.2.b: the special circumstances or conditions are not the result of actions by the applicant;*

The Petitioners purchased this property in 2012, and are not responsible for its size or shape, or for the location of the existing garage in the side and rear setbacks.

3. *Section 59-7.3.2.E.2.c: the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the Statement and photographs in the record, that the existing garage is in poor condition. See Petitioners' Exhibits 5(a)-(e), attached to their Statement (Board Exhibit 3). The Board further finds that the grant of the requested variances is the minimum necessary to allow the replacement of this structure with a safe structure on essentially the same footprint (the orientation being slightly adjusted so that the southeast (front left) corner is fully on the Petitioners' side of the property line), and thus to comport with the established historic or traditional development pattern of this neighborhood and to overcome the constraints imposed on the development of this lot by its small size and unusual shape, in satisfaction of this Section.

4. *Section 59-7.3.2.E.2.d: the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the proposed construction will continue the residential use of the property and that the variances can therefore be granted without substantial impairment to the intent and integrity of the applicable master plan.

5. *Section 59-7.3.2.E.e: granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

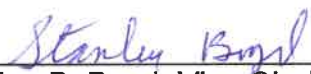
The Board finds that the variances requested would allow construction on essentially the same footprint as the existing one-car garage, which has been a fixture on this property since 1942. The Board further finds, based on the Statement, that the proposed construction will cause "no change to the views, use, or enjoyment" by the neighbors of their property. In addition, the Board notes that the record contains letters of support for the grant of the variances from the owners of the abutting and confronting properties. See Petitioners' Exhibits 9(a)-(d), attached to their Statement (Board Exhibit 3). Thus the Board finds that granting the requested variances will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variances of five (5) feet from the left side lot line and five (5) feet from the rear lot line are granted, subject to the following conditions:

1. The Petitioners shall be bound by their testimony and exhibits of record, to the extent that such evidence and representations are identified in this Opinion.
2. Construction shall be in accordance with Exhibits 4(a) and 5(a)-(d).

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, Vice Chair, seconded by Bruce Goldensohn, with Katherine Freeman and Jon W. Cook in agreement, and with John H. Pentecost, Chair, necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Stanley B. Boyd, Vice Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of June, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.